



TOWN OF MINTO

DATE: March 14, 2017

REPORT TO: Mayor and Council

FROM: Bill White, C.A.O. Clerk

SUBJECT: Bill 68 Modernizing Ontario's Municipal Legislation

STRATEGIC PLAN:

Governance and Leadership

Demonstrate Council and Staff leadership by taking primary responsibility for implementing and following the Strategic Plan, while recognizing the roles of community leaders in achieving Plan success.

Financial Strategy

Manage Town finances in a transparent and fiscally responsible manner using a wide variety of accepted methods such as maintaining healthy reserves, investing conservatively, sensible user fees, property tax control, and responsible borrowing.

BACKGROUND

Bill 68 to Modernize Ontario's Municipal Legislation is being debated under second reading in the Legislature, and is scheduled for Standing Committee hearings later in March. At the Ontario Good Roads Association Conference Nigel Bellchamber and Fred Dean characterized the bill as a potentially costly and intrusive legislative change that will impact municipalities. The Association of Municipalities in preparing its position on Bill 68 is indicating "some proposed changes are welcome and others are problematic from a policy or implementation lens". They suggest changes be "clear, fair, and do not generate unintended consequences".

The following are some terms defined previously for Council that are relevant to Bill 68:

Code of Conduct

Section 223(2).1 of the Municipal Act allows Council to adopt a Code of Conduct to govern the overall behaviour of council and local boards. The Code could set out rules and policies of the Town "governing the ethical behaviour" of Councillors.

The Act allows an Integrity Commissioner reporting to Council to be appointed to deal with complaints about violations of the Code of Conduct. The Town is not required to have a Code of Conduct or appoint an Integrity Commissioner. If there is a Code of Conduct, Council cannot impose a reprimand or suspension unless an Integrity Commissioner is in place.

Municipal Ombudsman

Section 270 of the Municipal Act lists mandatory policies municipalities must have in place including one describing: "The manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to

ensure that its actions are transparent to the public.” Section 223.13 allows Council to appoint its own Ombudsman to independently investigate any decision or recommendation made or act done or omitted in the course of the administration of the municipality. Some municipalities have appointed a local Ombudsman to report to Council on such issues.

Auditor General

Section 223.19 (1) of the Municipal Act states Council may appoint “an Auditor General who reports to council and is responsible for assisting the council in holding itself and its administrators accountable for the quality of stewardship over public funds and for achievement of value for money in municipal operations.” This is different than appointing an auditor under Section 296(1) which is required of all municipalities to audit financial transactions, and express an opinion on the transactions. Some larger municipalities have appointed an Auditor General.

Judicial Investigation

Another key section is 274(1) which allows a municipality to ask a judge of the Superior Court to investigate misconduct of a councillor, employee or person having a contract with a municipality. The judge can also look at the conduct of the Town’s business and the “good government” of the municipality. Often municipalities are assigned the cost of an inquiry.

Role of Council

Under Section 224 (d1) Council, among other duties, is “to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality.” Councillors must also represent the public and maintain the financial integrity of municipalities. Section 225 states the duties of the Mayor including providing leadership to Council and functioning as the chief executive officer. These responsibilities are set out in detail in the Town’s Procedural By-law, but clearly Council exercises a critical decision making role in municipal business.

Role of Staff

The Municipal Act also requires municipalities appoint a Treasurer and a Clerk, and may also appoint a Chief Administrative Officer. Duties are specified in the act and include in all cases “such other duties as are assigned by the municipality.” All positions have a responsibility to comply with obligations set out in the Municipal Act or other legislation including the by-laws and policies of the Town.

The Municipal Act states a CAO, if appointed, is responsible for the “general control and management” of municipal matters and ensuring its “efficient and effective operation.” The Clerk must record resolutions and decisions of Council without note or comment, report the name and vote on a matter if asked by a Councillor, keep originals or copies of by-laws and minutes. The Treasurer is to collect payables, issue receipts, deposit money, pay debts and expenses, maintain account records, provide information to Council on the “financial affairs of the municipality”, and ensure investments meet applicable regulations.

The following summary of the legislative changes is based on AMO's summary of Bill 68:

Code of Conduct and Conflict of Interest

- Codes of conduct for members of council and local boards would be mandatory
- The Minister may pass regulations governing what must be in a Code of Conduct
- All municipalities must provide access to an integrity commissioner who has an expanded role to investigate conflict of interest, provide advice to Council on obligations and educational information to the public about these matters
- Require complaints on contraventions to be filed within six weeks of the activity in question and the commissioner's report within 180 days;
- Sets out principles that Council act with integrity, impartiality etc, Allows a member of Council subject to a code of conduct review to speak but not vote on any penalty.
- Require members of Council to file a written statement of their conflict of interest after disclosed at meeting, and the Town maintains a registry for public inspection
- Commissioners can start inquiries at their own discretion, provide notice of the inquiry, hold a public meeting, access all municipal material, and after the decision the municipality must pay costs.
- Allow a judge to impose broader penalties if they find a contravention up to and including disqualifying a member or former member for up to seven years, and require restitution.

Open Meetings

- Definition of an open meeting clarified where a matter is discussed or dealt with that "materially advances the business or decision-making of the relevant council".
- Increasing reasons for closed meetings to include discussing confidential information provided by senior governments, third party information supplied in confidence, trade secrets, financial or technical information belonging to municipalities that has a monetary value belonging to municipalities, and positions in negotiations.
- Procedural bylaw can provide for electronic participation by members at open, but electronic participants are not counted for quorum.
- Require a resolution stating how a closed meeting investigation report will be dealt with where the investigator's opinion is that a meeting was closed contrary to the Act.

Municipal Elections Act, 1996

- Council and school board members to start November 15 rather than December 1.
- Raise single candidate contribution limits to \$1,200.
- Candidate may self-fund campaign to \$7500 + \$0.20 per elector for head of council, and \$5,000 + \$0.20 per elector for other council offices to a maximum of \$25,000.

Property Tax Collection and Administration

- Amendments to improve property tax collection and administration such as electronic delivery of property tax bills, broadening the range of fees and charges that can be added and certain property tax relief processes.

- Reduce from 3 to 2 years of property taxes owing before a municipality can start a property tax sale.
- Permits municipalities to expand investment opportunities as a Prudent Investor according to a set framework.
- Municipal authority to speed up tax sales that have vested in the Crown because of the dissolution of a corporation so that lands can be made productive more quickly.

Climate Change

- Clarify municipal powers to pass by-laws respecting climate change, participate in long-term planning for energy use in the municipality.
- Make climate change as a matter of provincial interest under the Planning Act
- Specify powers to pass by-laws to protect and conserve the environment such as require green roofs or other Code approved alternatives
- Require policies on how the municipality will protect and enhance the tree canopy and natural vegetation.

Other:

- Small business counselling programs under Section 108 would not need Provincial approval but regulations will be set control how municipalities set up such a service
- Require regional municipal governments review the number of members that represent lower-tier municipalities at least once following every second municipal election
- Ministry can change lower tier representation if the upper tier fails to conduct its review
- Allow a lower-tier council to appoint an alternate member to temporarily replace a person who is a member of both the lower-tier and upper-tier council.
- Require municipal governments have a policy on the relationship between members of council and the officers and employees of the municipality.
- Provide municipalities with the authority to require a person to pay an administrative penalty if the person has failed to comply with a municipal by-law passed
- Require a policy supporting pregnancy and parental leave for council members, and ensure a members' seat does not become vacant due to absence for pregnancy, or the birth or the adoption of the member's child for a 20 week consecutive period or less.
- To no longer limit a municipality's ability to pass bylaws regulating existing advertising devices, such as signs and provide for transition respecting existing municipal by-laws.
- Added authority to enter private land to maintain an adjoining municipal property, subject to certain conditions and limits.
- Make municipal fill by-laws apply even if the area is also under jurisdiction of conservation authorities.
- New authority to register on title an agreement required as a condition of demolition permit or conversion of residential rental properties, and enforce agreement.

COMMENTS

Changes in Bill 68 that streamline, reduce costs and decrease bureaucracy are supported. These include improving and shortening the tax sale process, increased investment options

for Treasurers, electronic meeting participation options, lower tier representation and similar. Election Act reforms reducing the period a Council remains post-election make sense, but election finance reforms and new spending limits will have little impact in Minto where few candidates spend close to the limits proposed.

Imposing climate and environmental initiatives on municipalities through Bill 68 is not surprising given the significant commitments made by the Province. Minto developed a Tree Policy in 2016 which addresses the issue of preserving the tree canopy. Recently Council committed to developing a Municipal Energy Strategy “in-house” in response to the emerging Provincial Long Term Energy Plan. Making climate change a provincial interest under the Planning Act is not significant as Provincial policy is “riddled” with climate change considerations. This Province has succeeded in imposing its climate initiatives in policy but continues to lack specificity on municipal actions despite collecting \$1.9 billion in revenues.

A year ago Council began a program to adjust to provincial oversight of all municipal operations by the Ontario Ombudsman. As of January 1, 2016 as a last resort a ratepayer could file a complaint with the Ombudsman to review any aspect of municipalities’ work including snow removal, parking, recreation programs, conduct of council members, conflicts of interest, or the work of local accountability officers (using their examples). The Ombudsman would not overturn local decisions but look at process and fairness.

To prepare for the new oversight Minto Council approved a fiscal accountability policy, code of conduct, accountability and transparency policy, and a formal complaint procedure where Council is the final authority on filed complaints. Rather than appoint an Integrity Commissioner to review the process around a complaint after a Council decision, the Town process would rely on such review by the Ombudsman.

Between January 1 and March 31, 2016, the Ombudsman opened 918 cases about 227 municipalities with most “resolved quickly without need for a formal investigation”. 284 police complaints were referred to the Independent Police Review Director. Top five cases were Councils and committees (266), Ontario Works (66), By-law enforcement (63), Municipal hydro (57), and Housing (49). The Ombudsman encourages “strong and accessible processes to deal with complaints and appeals”, and establishing “local accountability officers such as integrity commissioners, auditors general and ombudsmen”.

Even though the Ombudsman is now available to oversee all municipal decision making, the Province is not satisfied municipal government operations are under sufficient bureaucratic scrutiny. Bill 68 takes optional tools already in place in the Municipal Act and takes away a municipality’s discretion to apply these tools, particularly in the area of code of conduct and integrity commissioners. This is contrary to the original notions of the current Municipal Act where many prescriptive regulations and processes were removed so local government could function with independence. Municipalities were given “natural person powers” to allow them greater flexibility to exercise local government functions.

The following review from lawyer's weekly in 1997 summarizes the intent of Municipal Act when it was adopted. "The proposed new Act intends to change the approach and philosophy of municipal legislation. The intention as set out in the Consultation Document and the draft of the core sections is to eliminate the necessity of individual prescriptive grants of power. Instead, it adopts the concepts of "natural person powers", "governmental powers" and "areas of authority"." Bill 68 continues to erode local autonomy and degrade municipal governance in some ways.

Bill 68 will create a new bureaucracy between Council and Province only a year after the Ombudsman was inserted. Municipalities will have to hire an integrity commissioner not just to give guidance and rule on complaints under a code of conduct, but must pay them to initiate their own investigations if they see fit and provide education and advice to the public, Council members and local committee members on aspects of conflict of interest and code of conduct. In Minto our approach was to develop a code of conduct and in the event of an issue have Council appoint an integrity commissioner to oversee a review.

The main issue with the legislation is that the Province is not treating municipalities as a mature form of government able to regulate and function professionally in public environment. Oversight recommended in this legislation far exceeds that which applies to Provincial politicians. The tools to control much of what Bill 68 mandates are in the legislation now allowing each municipality the ability to address issues of integrity or conflict of interest in a way that is in the best interest of its ratepayers.

Municipalities are more accessible to the public, scrutinized by local media and overseen by the Province and the Ombudsman already. Concern arises as to what is driving this increased regulation and want of control over municipal operations. Bill 68 may on the surface be an attempt to enshrine elements of the Ontario government's mandate on municipalities as a legacy through the 2018 Provincial election.

FINANCIAL CONSIDERATIONS:

The cost of implementing Bill 68 is not yet determined. There will be on-going costs to retain and call upon an integrity commissioner should this become mandated.

RECOMMENDATION:

THAT Council receives the C.A.O. Clerk's March 14, 2017 report regarding Bill 68 Modernizing Ontario's Municipal Legislation and that the following comments be sent to the Association of Municipalities, the Minister of Municipal Affairs and local MPP Randy Pettapiece:

That Town of Minto Council supports elements of Bill 68 that streamline, reduce costs, clarify rights and decrease bureaucracy such as improving the tax sale process, increasing municipal investment options, allowing for electronic meeting participation

options, practical solutions to lower tier representation, election timing matters, and parental/pregnancy leave for councillors.

Town of Minto Council does not object to sections of Bill 68 that impose mandates on climate change and tree planting policies since these are enshrined in Provincial policy already, but fails to see the need for such changes since municipalities lead the way in environmental initiatives given the autonomy already in the current Municipal Act. Council also does not object to refinements around closed meetings except to the extent that new mandates and reporting to the Province may be required.

Town of Minto Council does not support Bill 68 elements that decrease local autonomy and increase mandated oversight, reporting and bureaucracy such as imposing a requirement to retain an integrity commissioner, and granting that position authority and responsibility already incumbent upon staff, a Head of Council, individual members of Council and local boards, Ministry of Municipal Affairs staff and the Ombudsman.

Bill White, C.A.O. Clerk